IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 19TH JULY 2006 / 28TH ASHADHA,1928

WP(C).No. 18601 of 2006(M)

PETITIONER:

DAVY THOTTAN,
AGED 73 YEARS,
S/O.DEVASSY, UMMANKULAM ROAD,
IRINJALAKKUDA, THRISSUR.

BY ADV. SRI.P.V.MOHANAN

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION (G) DEPARTMENT.

2. SUB TREASURY OFFICER,
THRISSUR.

3. ACCOUNTANT GENERAL,
INDIAN AUDIT AND ACCOUNTS DEPARTMENT,
OFFICE OF THE ACCOUNTANT GENERAL (A&E), KERALA.

BY GOVT.PLEADER SMT.D.P.RENU.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/07/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K. Basheer, J.

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W.P(C) No. 18601 of 2006-M

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Dated this the 19th day of July, 2007.

J U D G M E N T

Petitioner is a family pensioner. Admittedly petitioner had been drawing the family pension till September 1995 after the death of his wife who was a Government employee. But petitioner was denied pension since October 1995 on the ground that he had married another lady in September 1995 and thus had become ineligible to get family pension.

2. It is contended by the petitioner that his re-marriage after the death of his wife would not disentitle him to draw family pension. Learned counsel has placed reliance on Ext.P5 order issued by the Government in this connection.

3. It is pertinent to note that Ext.P5 order was issued by the Government to alleviate the grievance of those Government servants whose marriage took place after retirement. As per Rule 90(6) Part III KSR read with Note 2 thereunder, as it stood then, wife in the case of male employees and husband in the case of female employees were eligible for family pension only if the marriage took place prior to the retirement of the Government servant concerned. In other words, the stipulation in the above rule was that the marriage of the Government employee after his/her retirement could not be reckoned for grant of family pension to the surviving spouse. In Ext.P5 the Government had ordered that Rule 90(6) Part III KSR would be suitably amended to obviate the difficulty of the retired employees who married after their retirement.

4. Learned counsel contends that Ext.P5 will enable the petitioner to get family pension. Undoubtedly the above contention is totally misconceived. Learned counsel has not been in a position to explain as to how the petitioner would come within the purview of Ext.P5 order. Petitioner has also sought support from Ext.P6 order issued by the Government. Yet again, the said order which was issued pursuant to Ext.P5, is in respect of spouses who became eligible for pension though they had been married after the retirement of the employees concerned. Obviously the petitioner does not fall in the said category. He had married a Government servant while she was in service. He became a family pensioner on her death. After drawing pension for a few years he re-married. Thus he became ineligible to draw family pension. Exts.P5 and P6 do not have any application in the case of the petitioner. Similarly the decision in Mathai v. State of Kerala (1990 (2) KLT 363) and **Bhagwanti** v. **Union of India** (AIR 1989 SC 2088) have also no relevance as far as the case of the petitioner is concerned.

There is no merit in the writ petition. It is therefore dismissed in limine.

A.K. Basheer
Judge.

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